

## **The Principles Behind Intelligence Surveillance (TPM)**

**June 19, 2008 By U.S. Rep. Rush Holt**

Congress on Friday will debate legislation that would update the Foreign Intelligence Surveillance Act (FISA). This is the fourth or fifth iteration since last year that Congress has addressed this issue in the face of baseless claims and propaganda by the Administration and its allies that the intelligence community is unable to do its job.

Fundamentally, this debate is about how we can protect the American people in every respect - by giving the intelligence community the flexibility and tools it needs to identify and stop those out to harm us and by protecting individual Americans from harmful suspicions, intrusions, and interference. Such protections were not contained in the so-called "Protect American Act" that the President signed last August. That law has expired and the surveillance ordered under it still stands. Some of those orders will begin to expire after August and the Administration is demanding that Congress act.

Before addressing the specifics of this legislation, I want to reiterate the principles that I think should be put in statute as amendments to FISA.

Much of the news and discussion about this surveillance legislation has to do with immunity from lawsuits for telecommunications companies that may have followed the President's request and overstepped the law. Generally, I believe that people and corporations should be held responsible for their actions. More important, though, is the other part of this legislation that would set the law for surveillance in the future.

Any change to FISA must strengthen our ability to gather reliable, verifiable, and actionable intelligence on real enemies versus imagined or assumed enemies. I am not aware of any historical examples where a "fishing expedition" approach to intelligence collection has made our country safer. To the contrary, fishing expeditions are sloppy intelligence. There is an age-old principle used to avoid imagining someone is an enemy or a danger to society. The people who would seize persons, papers, and communications are not the same people who determine that the target should be suspect. A court considers the particular facts and then issues a particular search warrant. Neither police, nor intelligence agents should decide who is suspect. It is an important principle that is part of what makes the United States of America what it is: the government does not regard any American with suspicion first. Only after a due process is a person treated with suspicion. No individual, no class, no religion, no immigrant is lesser in the eyes of the government.

I must be able to tell each of my constituents that they are safe from warrantless government surveillance. We need to ensure that when we say they have the protection of the Fourth Amendment that it is a truthful statement, not a meaningless cliché. This is a special concern for those with family overseas; they worry (with good reason) that our government may be monitoring their communications with their relatives even if they are not the specific targets of a court-approved warrant for electronic surveillance. Like the legislation the House of Representatives passed in March, we must reject the President's efforts to redefine the relationship between the people and their government.

We should include a realistic sunset provision so we can revisit - and if necessary, revise - the legislation. When we passed the Protect America Act, we correctly allowed that overly broad law to expire so we could continue the process of fine-tuning our surveillance law overhaul proposals. Contrary to the warnings of those in the minority, we were able to do that safely because the existing FISA law continues in force and the intelligence community can continue its important work without fear of going dark.

This is one of the most important debates in the 110th Congress. I am carefully reviewing the compromise language that was just now circulated to members, and will return to this site to post my comments on whether the bill adheres to the principles I've addressed above.

This site has been the home for a thoughtful discussion of FISA and legislation that affects FISA. I appreciate the opportunity to join in this exchange of ideas. As Congress again prepares to debate FISA reform legislation, I want to hear from you. In the comments below, please share with me any comments or questions about this issue. I look forward to posting again and addressing some of your concerns.